



A.S.No.203 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 20.06.2025

Pronounced on: 04.07.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.203 of 2022

1. S.Shanthini Devi
D/o.V.Somasundaram

2. Prabhu @ Chandru
S/o.V.Somasundaram

Both are residing at
No.19/10 Kasipuram,
'B' Block 2nd Street, Royapuram,
Chennai 600 013.

... Appellants/Plaintiffs

/versus/

1. Mr.V.Somasundaram
S/o.Late Vishwanathan

2. Mr.V.Loganathan
S/o.Late Vishwanathan

3. Jamuna
D/o.Late Vishwanathan

4. Suguna Rani
D/o.Late Vishwanathan

1 to 4 residing at No.32/35, Porkaliamman Koil Street,
Kattukuppam Ennore, Chennai 600 057.

5. A.Indirani

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W/o.Late Sri.K.Amaranathan,
No.143, 1st Street, Periya Kasi Kovil Kuppam
Ernavur, Chennai 600 057.

6. S.Dilli Babu
S/o.Late Sri.Sabapathy, No.27/18A,
TSR Nagar Extension,
Thiruvottiyur, Chennai-600019

7.S.Elangovan
S/o.Late Sri. Sabapathy,
No.1 SVM Nagar, 15th Street,
Kathivakkam, Ennore Chennai-600057

8.S.Thenmozhi
W/o.Sri.Subbarayan,
D/o.Late Sri.Sabapathy,
No.9, 16th Street, Satyavani Muthu Nagar,
Kathivakkam, Ennore, Chennai-600057

9.S.Nambirajan
S/o.Late Sri.Sabapathy,
No.9, 16th Street, Satyavani Muthu Nagar,
Kathivakkam, Ennore, Chennai-600057

10.T.Vijaya
W/o.Sri.Thangaraj,
D/o.Late Sri.K.Amaranathan,
No.23, 1st Street, Periya kasi Kovil Kuppam,
Ernavur, Chennai-600057

11.A.Raja
S/o.Late Sri.K.Amaranathan,



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No.143, 1st Street, Periya kasi Kovil Kuppam,
Ernavur, Chennai-600 057.

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12.K.Selvi
W/o.Sri.Kuppusamy,
D/o.Late Sri.K.Amaranathan,
No.6, 2nd Street, Periya kasi Kovil Kuppam,
Ernavur, Chennai-600 057.

13.S.Banumathi
W/o.Sri.Shankar,
D/o.Late Sri.k.Amaranathan,
No.40, Amman Koil street, Royapuram,
Chennai-600 013.

14.North Chennai Logistics Private Limited.,
Rep. by its authorized signatory,
Mr.N.V.Purandiran,
S/o.Sri. Vasudevan Pillai,
Having office at Jan Priya Crest No.113,
Pantheon Road, Egmore,
Chennai-600 008.

15.Mathivanan
S/o.Pandurangan,
No.13/30, 1st Street,
Kattupakkam, Ennore,
Chennai-600 057.

16.Suganthi
W/o.Mani,
Porkaliamman Koil 1st Street,
kattukuppam, Ennore, Chennai-600 057.

17.Karunakaran
Porkaliamman Koil 1st Street,



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Kattukuppam, Ennore,
Chennai-600 057.

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18. Karthiga
W/o.R.Sugumaran,
Porkaliamman Koil 1st Street,
Kattukuppam, Ennore, Chennai-600057.

...Respondents/Defendants

Appeal Suit has been filed under Section 96 of the Civil Procedure Code, pleaded to set aside the Judgment and decree dated 31.01.2019 passed in O.S.No.212 of 2014 on the file of the IV Additional District Judge, Tiruvallur at Ponneri.

For Appellants : Mr.S.William

For Respondents : Ms.N.Swathi Priya Raj,
for Mr.Thomas T.Jacob, for R14
: No appearance, for R2, R5, R6,
R8 to R13, R16 & R18
: Steps not take, for R3 & R4
: Unclaimed, for R1, R7, R15 & R17

J U D G M E N T



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The Appeal Suit against the dismissal of the suit for partition and separate possession.

2. The appellants herein are the plaintiffs in the suit for partition and separate possession. They are son and daughter of Somasundaram S/o.Viswanathan. The suit schedule consists of two items of property. The 1st item is the property purchased by K.P.M.Kuppusamy Chettiar on 21.07.1942. The 2nd item is the property which Kuppusamy Chettiar during his lifetime, settled in favour of his wife Krishnaveni and Son Viswanathan *vide* document dated 19.09.1949. K.P.M.Kuppusamy Chettiar died intestate, leaving his widow Krishnaveni, his son Viswanathan and two daughters, Indirani and Ganga.

3. Krishnaveni Ammal died intestate on 27/04/1975. Viswanathan died intestate on 01.11.2003, leaving behind his widow Malliga and four children namely, Somasundaram, Loganathan, Jamuna and Suguna Rani (defendants 1 to 4). Malliga W/o.Viswanathan died intestate on 08.08.2014.

4. The plaintiffs are the daughter and son of Somasundaram (1st



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defendant). Suit for partition claiming 2/36 share in the 1st item property, which was left intestate by Kuppusamy Chettiar. They claim 2/12 share in the second item property, which Viswanathan got from his father Kuppursamy Chettiar through the settlement deed of the year 1949.

5. The plaintiffs' case is that, the two items of properties are the property of K.P.M.Kuppusamy Chettiar, who is their great grandfather. It is their ancestral property. While so, even their father Somasundaram (first defendant) cannot alienate the minors share in the coparcenary property. While so, taking advantage of the fact that, Somasundaram is a drunkard and addict to alcohol, Somasundaram was chased out from the joint family house in the year 2004. Subsequently, the defendants 1 to 4 alienated the suit properties to defendants 5 to 13. The 14th defendant had purchased the property from defendants 5 to 13. These transactions, according to the plaintiffs, will not bind them in so far as their share in the suit property which is an ancestral property held jointly by all the coparceners.

6. The defendants 1 to 4 remained absent. The other defendants



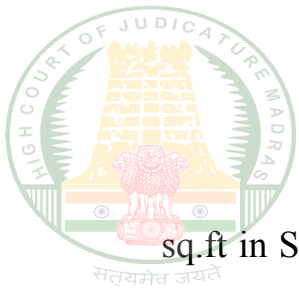
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contested the suit by filing written statements. According to the 5th defendant

(Indirani D/o.Kuppusamy Chettiar), the suit is ill-conceived and not maintainable.

The plaintiffs claim share in the coparcenary property through their father Somasundaram, who is alive and arrayed as first defendant in the suit. Further, the suit property is not a property of Hindu Undivided Family (HUF). It neither carry the character of coparcenary property, nor the plaintiffs fall within the meaning of coparceners. Neither the mother of the plaintiffs nor the plaintiffs were in possession of the suit property. Hence, the alienation of the property by the defendants 5 to 13 cannot be questioned by the plaintiffs.

7. In the written statements of 13th, 15th and 17th defendants, filed separately, the *locus standi* of the plaintiffs seeking partition of the property when their father is alive has been questioned. It is contended that, the defendants 1 to 4 have no right in the suit property that was sold by the defendants 5 to 13 in favour of 14th defendant. After the demise of Kuppusamy Chettiar, it is incorrect to say, his son Viswanathan became the *Kartha* of the family. The plaintiffs have no right in the second schedule property, much less 2/12 share. In fact, on 03.10.2006, the wife and children of Viswanathan sold out a part of the vacant land measuring 895



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sq.ft in S.No:68/1 at Kattukupam Village. Therefore, the present suit for partition of second schedule, first item property, filed after 8 years, is not maintainable. The 15th defendant is in possession of this portion of the property and enjoying it absolutely, by putting up permanent structure over the land.

8. The following issues were framed for consideration:-

1) Whether the plaintiffs are entitled for 2/36 share in 1st schedule properties and 2/12th share in the 2nd schedule properties?

2) Whether the plaintiffs are entitled for the relief of permanent injunction against D.17 and D.18 restraining them from putting up constructing in the 3rd schedule?

3) Whether the defendants 1 to 4 and 14 to 18 can be restraining by way of permanent injunction from alienating the suit properties till the disposal of the suit in favour of the plaintiffs ?

4) Whether the cause of action is true and correct ?

5) To what relief ?

9. The Trial Court, after considering the pleadings and the source of title to the suit properties, dismissed the suit on the ground that a suit for partition is not maintainable as long as Somasundaram, who is the father of the plaintiffs, is alive.

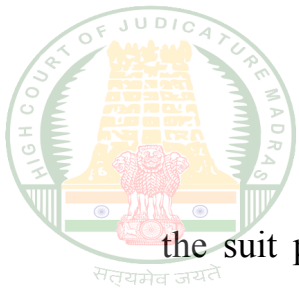


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10. The Learned Counsel for the appellants submitted that the trial Court, accept the fact that the property originally belongs to Kuppusamy Chettiar and the plaintiffs are the children of Somasundaram, who is the grandson of Kuppusamy Chettiar, then naturally the property becomes coparcenary property. The plaintiffs are the 4th generation linear descendants of Kuppusamy Chettiar. Therefore, on their birth, the property of Kuppusamy Chettiar gains the character of coparcenary property. The trial Court failed to consider that the suit properties were held by the legal heirs of Kuppusamy Chettiar as Hindu Undivided joint family property and it was in joint possession and enjoyment of all the family members. The joint possession and joint enjoyment of the suit properties by the plaintiffs along with other sharers was not specifically denied by the defendant. No oral evidence to controvert the plea of undivided joint enjoyment of the family properties. While so, the Court below erroneously dismissed the suit for partition.

11. Per contra, the learned counsel for the respondent submitted that at no point of time, the suit properties were enjoyed as joint family property. There is no evidence to show that the descendants of Kuppursamy Chettiar were enjoying



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the suit property jointly as Hindu Undivided Family. The properties were dealt with by the sharers as their absolute property as per the law of succession and not as coparceners properties. Hence, the trial Court rightly dismissed the suit as premature.

Point for determination:

Whether the appellants/plaintiffs have right to seek partition in the suit properties as coparceners of Hindu undivided family, during the life time of their father ?

12. The plaintiffs' plea for partition is based on the premise that the self acquired property of Kuppusamy Chettiar, after his demise, is joint family property in the hands of his descendants. Therefore, being the fourth generation from the propositus (Kuppusamy Chettiar), they claim that, by birth, they are coparceners entitled for share in the property and to seek partition. However, the trial Court has categorically held that the suit properties are not joint family properties and the plaintiffs are not coparceners. As such, they cannot claim partition of the property before succession opens.



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13. The learned counsel for the appellants, referring *Vineeta Sharma -vs- Rakesh Sharma and Another*, reported in **2020 (5) CTC 302**, submitted that the plaintiffs, being the great-grand-children of Kuppusamy Chettiar, who is the propositus of the family. Hence, the plaintiffs come with the definition of coparceners.

Paragraph No.23 of the above judgement says:-

“23. Hindu coparcenary is a much narrower body. It consists of propositus and three lineal descendants. Before 2005, it included only those persons like sons, grandsons and great-grandsons who are the holders of joint property. For example, in case A is holding the property, B is his son, C is his grandson, D is great-grandson, and E is a great-great-grandson. The coparcenary will be formed up to D, i.e. great-grandsons, and only on the death of A, holder of the property, the right of E would ripen in Coparcenary as Coparcenary is confined to three lineal descendants. Since grandsons and great-grandsons become coparceners by birth, they acquired an interest in the property.”

14. The Hon’ble Supreme Court, in the above passage, had explained how a coparcenary is created. According to the above illustration, if there is a propositus and no obstruction for three generations, a coparcenary is formed.



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15. The Learned Counsel for the appellant had failed to take note that after the Hindu Succession Act, 1956 came into force, Section 6 (Devolution of interest in coparcenary property) is an exception to the general rule of succession as laid down in Section 8. According to Section 8, in case of any Hindu Male who dies intestate, his property shall devolve according to the provisions of the Act. Under Section 6, only in cases when a Hindu male dies after the commencement of the Act, having at the time of his death, an interest in the Mitakshara Coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with the provisions of Act. i.e., Section 6(1).

16. At the same time, the proviso to the Section 6 (1) restricts devolution by survivorship and says, if he dies leaving behind a female relative specified in Class 1 of the Schedule, the interest in the deceased in the coparcenary property would devolve by testamentary or intestate succession under the Act and not by survivorship.



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17. To have the advantage of Section 6 of the Hindu Succession Act, which deals about devolution of interest in coparcenary property, first the property purchased by Kuppusamy Chettiar in the year 1942 ought to have been a coparcenary property at the time of commencement of the Act in the year 1956. Obviously, the suit property is the self acquired property of Kuppusamy Chettiar and not a coparcenary property, as illustrated in para 23 of the *Vineeta Sharma judgment*. (cited *supra*).

18. To add, the six essential character of a coparcenary is laid down by the Hon'ble Supreme Court of India in ***Controller of Estate Duty -vs- Alladi Krishnaswamy***, reported in **1977 (3) SCC 385**, in the following words:-

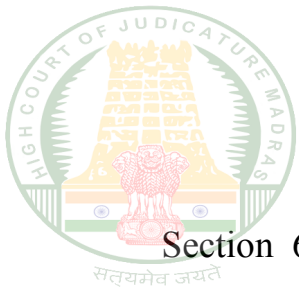
“Thus analysing the ratio of the aforesaid case regarding the incidents of a Hindu coparcenary it would appear that a Hindu coparcenary has six essential characteristics, namely, (1) that the lineal male descendants up to the third generation acquire an independent right of ownership by birth and not as representing their ancestors; (2) that the members of the coparcenary have the right to work out their rights by demanding partition; (3) that until



partition, each member has got ownership extending over the entire property conjointly with the rest and so long as no partition takes place, it is difficult for any coparcener to predicate the share which he might receive; (4) that as a result of such co-ownership the possession and enjoyment of the property is common; (5) that there can be no alienation of the property without the concurrence of the other coparceners unless it be for legal necessity; and (6) that the interest of a deceased member lapses on his death and merges in the coparcenary property.”

19. Assuming that, it is a coparcenary property, on the date of commencement of the Act, even then, in view of the proviso to Section 6(1) of Hindu Succession Act, the property has to be devolved only by intestate succession under Section 8 of the Act and not by survivorship. This is because, Indirani and Ganga, who are the daughters of Kuppusamy Chettiar, who are Class-I female heirs were alive, when the succession opened on the death of Kuppusamy Chettiar.

20. The above preposition of law is fortified by the decision of the Hon'ble Supreme Court in ***Gurupad Khandappa -vs- Hirabai Khandappa Magdam***, reported in ***1978 (3) SCC 383***, wherein while considering the effect of



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Section 6 (pre-amended) of Hindu Succession Act, the Apex Court held that,

Hirabai the widow of Khandappa (a Class I - female heir), is entitled for equal share along with her sons and daughter in the coparcenary property of her husband, who died in the year 1960 i.e., after the commencement of the Act, in view of the proviso to Section 6(1) of the Act.

21. The evidence of P.W-1 and P.W-2, along with Ex.A-1 to A18, upon which the plaintiffs base their case miserably fail to establish the fact that the suit properties are ancestral properties. Even according to the plaintiffs, the first schedule property was purchased by Kuppursamy Chettiar on 21.07.1942. Hence, it is his self acquired property. On his death, the devolution can be only intestate succession and not by survivorship. The 1/3rd share of Viswanathan S/o.Kuppusamy Chettiar, in the first schedule property to be shared by all the male and female heirs of Kuppusamy Chettiar, in the light of proviso to Section 6(1), read with 8 of Hindu Succession Act. Thus, Viswanathan, will get 1/4th share in the First Schedule property by succession as Class-I heir of Kuppusamy and not as coparcener in the ancestral property.



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22. Likewise, even according to the plaint averments, the second schedule property was settled in favour of Krishnaveni and Viswanathan by Kuppusamy Chettiar under Ex.A-1 dated 19.09.1949. If so, it is the absolute property of Krishnaveni and Viswanathan. After the intestate death of Krishnaveni on 27.04.1975, her 1/2 share is to be succeeded by Viswanathan along with his sisters Indirani and Ganga. It is again the absolute property of Viswanathan so far his 1/2 share settled under the settlement deed. In addition, he also gets 1/2 share of Krishnaveni. Thus, from his mother Viswanathan has to share with his two sisters equally i.e., 1/6 each. This portion is his property also should be by intestate succession and not by survivorship. Therefore, Viswanathan holds 4/6 share and his two sisters hold 1/6 share each. Since Viswanathan is alive on the date of institution of the suit for partition, the suit is not maintainable.

23. Further, the evidence on record reveals that the children of Kuppusamy Chettiar, namely Viswanathan, Indirani and Ganga had sold their shares in the property to third parties long before the institution of the suit. Which goes to prove that the suit property was not even in joint possession or common enjoyment of the plaintiffs.



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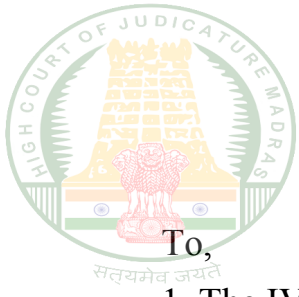
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24. In view of the settled legal position, as far as vesting of right on the plaintiffs if any, will open only if Somasundaram dies intestate and leaves any property without dealing. In other words, the legal heirs of Somasundaram, who are the plaintiffs, can inherit the property of Somasundaram only after the lifetime of their father Viswanathan, provided he does not deal his share in the property, either by way of sale or testamentary, during his lifetime. Whereas in this case, being his property and not a coparcenary, the property already alienated and nothing remains for sharing.

25. As a result, the Appeal Suit stands dismissed. There shall be no orders as to costs.

04.07.2025

Index : Yes.
Speaking order/non speaking order
Neutral citation : Yes/No.
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To,

1. The IV Additional District Judge, Tiruvallur at Ponneri.
2. The Section Officer, V.R.Section, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

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Pre-delivery judgment made in
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